

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 5, 2004

IN RE:

COMPLAINT OF AENEAS COMMUNICATIONS AGAINST
CITIZENS COMMUNICATIONS IN WEAKLEY COUNTY,
TENNESSEE

)
)
)
)
)

DOCKET NO.
02-00438

ORDER DENYING JOINDER

This matter is before the Hearing Officer pursuant to the *Motion of Aeneas to Join BellSouth as a Party* ("Motion") filed by Aeneas Communications, Inc. ("Aeneas") on February 4, 2004. For the reasons specified below, this *Motion* is hereby denied.

In support of the *Motion*, Aeneas cites Tenn. Comp. R. & Regs. 1220-1-2-.22(2) which gives the Tennessee Regulatory Authority ("TRA") the power to join parties in the interest of "just, efficient and economical disposition of cases." Aeneas contends that its dispute with Citizens Telecommunications Company of Tennessee, LLC ("Citizens") might be resolved if BellSouth Telecommunications, Inc. ("BellSouth") agrees to provide a UNE loop to facilitate the exchange of traffic between Aeneas and Citizens. To further explore this possibility for interconnection with Citizens, Aeneas suggests that BellSouth's participation in this Docket is necessary pursuant to the standards of Tenn. R. Civ. Proc. 19.01.

In its *Response to Motion Of Aeneas To Join BellSouth As A Party*, BellSouth states that it is not a necessary party to the resolution of the dispute between Aeneas and Citizens. According to BellSouth, Aeneas and Citizens have other options to establish interconnection between the two companies, and BellSouth is not even required by law to provide the facility requested by Aeneas. BellSouth contends that the only outstanding issue involving BellSouth is

the cost to Aeneas of any facility that may be provided by BellSouth to interconnect Aeneas with Citizens, an issue which can and should be resolved independently of Aeneas' complaint against Citizens.

It is true that TRA Rule 1220-1-2-.22(2) allows for the joinder of parties as indicated in the *Motion*. The standard for joinder is articulated in Tenn. R. Civ. Proc. 19.01 which reads as follows:

A person who is subject to the jurisdiction of the court shall be joined as a party if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest, or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reasons of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party.

Essentially, joinder requires a finding that the party is necessary or indispensable to a resolution of the matter at hand.¹

Based on this standard, Aeneas has not adequately supported its request to join BellSouth as a party to this proceeding. Aeneas has alleged that interconnection with Citizens through BellSouth facilities may not be available unless BellSouth is made a party to these proceedings but this argument falls short of the mark for several reasons. First, Aeneas never claims that BellSouth offers the only solution to its dispute with Citizens, only that BellSouth offers a possible solution warranting further investigation. While Aeneas may prefer a method of interconnection that involves the purchase of facilities from BellSouth, this preference does not make BellSouth a necessary and indispensable party if, as BellSouth contends, other options are available to Aeneas to establish interconnection with Citizens. Second, Aeneas has not established that interconnection through BellSouth is not available unless BellSouth is joined as

¹ See *Horton v Tennessee Dept of Correction*, 2002 WL 31126656, at *4, n 4 (Tenn Ct App 2002)

a party. In fact, BellSouth has indicated that the necessary facilities are available to Aeneas and Citizens upon request, subject to an agreement on cost. However, as suggested by BellSouth, the cost of BellSouth's facilities to the Parties is a separate issue from the method ultimately chosen by Aeneas and Citizens to establish an interconnection, a threshold decision in which BellSouth is not authorized to participate. For these reasons, Aeneas has failed to prove that complete relief is not available without BellSouth's participation, and

IT IS THEREFORE ORDERED THAT:

The Motion of Aeneas to Join BellSouth as a Party is hereby denied.

A handwritten signature in black ink, appearing to read "K Beals", written over a horizontal line.

Kim Beals, Counsel
as Hearing Officer